

**AFFIDAVIT OF MAILING, SERVICE, AND DEPOSIT OF CITY OF PALMER'S REPLY BRIEF  
REGARDING PETITION FOR ANNEXATION TO THE CITY OF PALMER**

I, THOMAS HEALY, being first duly sworn on oath, depose and state that:

1. On the 18<sup>th</sup> day of July, 2002, the City of Palmer's reply brief was mailed via the U.S. Mail Service or hand delivered to the three Respondents listed in Exhibit 1 attached to this affidavit.

2. On the 18<sup>th</sup> day of July, 2002, copies of all timely Responsive Briefs, timely correspondence regarding the filing of the Petition, and the City of Palmer's Reply Brief deposited for public review with other materials relating to the proposed annexation of 921.34 acres to the City of Palmer at the Palmer City Hall and the Palmer Library.

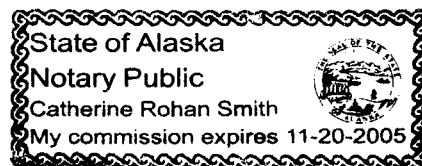
Thomas Healy  
SIGNATURE OF AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS 18 DAY OF July, 2002.

Catherine Rohan Smith

Notary Public

My Commission expires: 11-20-05



RECEIVED

JUL 18 2002

Local Boundary Commission

### Responsive Briefs

Ray T. Briggs	Received June 28, 2002	opposed to annexation
John Nystrom (with 11 signatures*)	Received June 28, 2002	opposed to annexation
Daniel Hanrahan**	Received June 28, 2002	opposed to annexation

### Correspondence

1. James and Carol Ward	Received June 14, 2002	opposed to annexation
2. John and Gloria Brawford,	Received June 14, 2002	opposed to annexation
3. M. Dewey	Received June 21, 2002	opposed to annexation
4. John Nolin (2 letters)	Received June 21, 2002	opposed to annexation
5. Clarence E. Furbush,	Received June 28, 2002	opposed to annexation
6. Milton Gilmore	Received June 28, 2002	supporting annexation
7. John and Cathy Glaser	Received June 28, 2002	opposed to annexation
8. Dan Hanrahan	Received June 28, 2002	opposed to annexation
9. Mary P. Culleson	Received June 28, 2002	opposed to annexation
10. Charles Blankenship	Received June 28, 2002	opposed to annexation
11. R.A. and LaRaine Runyon	Received June 28, 2002	opposed to annexation
12. John W. Kinter (2 letters) ***	Received June 28, 2002	opposed to annexation
13. Juanita Loyer****	Received June 28, 2002	opposed to annexation
14. Daniel and Christine Schien	Received June 28, 2002	opposed to annexation
15. June Bridges	Received June 28, 2002	opposed to annexation
16. Robert Meyer	Received June 28, 2002	opposed to annexation
17. Donna J. Karsten	Received June 28, 2002	opposed to annexation
18. Sandra Garley for Matanuska-Susitna Borough	Received June 28, 2002	no objection as presented

\* Attached petition signed by eleven individuals: John Nystrom, Fotula M. Studie, Linda Yannikos, Pete Yannikos, Larry A. Zenor, David Stanton, Arlene J. Fox, Troy Huls, Lawrence Vansanoja, Lisa M. Johnson, John Edwin Johnson.

\*\* 14-page brief with 4 exhibits

\*\*\* Mr. Kinter submitted two letters, one dated June 22, the other dated June 27.

\*\*\*\* Ms. Loyer's letter contained a statement from Natalie L. [last name illegible] objecting to annexation of her home "at the end of turtle land in Palmer West Subdivision."

EXHIBIT 1

Page ( of (

BEFORE THE ALASKA LOCAL BOUNDARY COMMISSION

Reference:      Petition to Annex 921.34      )  
                     Acres to the City of Palmer      )  
\_\_\_\_\_ )

**PETITIONER'S REPLY BRIEF**

The City of Palmer (City) submits this Reply Brief, in accordance with 3 AAC 110.490 and the schedule contained in the July 1, 2002, letter to the City from the Local Boundary Commission (LBC) staff in the Department of Community and Economic Development. This Brief replies to the three responsive briefs received by the LBC and addresses correspondence received by the LBC in this matter.

Responsive Brief Submitted by Ray T. Briggs

Mr. Ray T. Briggs submitted a three-page brief accompanied by approximately one hundred pages of exhibits. Mr. Briggs opposes the annexation of his property by the City. The points of his brief are summarized below, followed in each case by the City's reply:

1. Briggs did not request annexation and opposes it.

The City's annexation petition utilizes the legislative review annexation process, and the reasons for the annexation and the choice of this annexation method are explained in Section 3 of the petition. The City's primary purpose of this annexation is to take a more comprehensive approach to an annexation effort, rather than to continue an inefficient policy of petitioning for annexation of relatively small parcels of land and only at the property owner's request. This more comprehensive approach intends to annex enclaves to the City and to create more effective and efficient City boundaries. While Briggs' property is not entirely surrounded by present City boundaries, his property is part of an area that is, in effect, a geographic enclave due to its boundaries with the City and the Matanuska River, and it is reasonable a plan for efficient municipal boundaries would include this area within the municipality.

2. Briggs makes several claims involving the City-owned Palmer Municipal Airport, which lies immediately west of Briggs' property.

Most of Briggs' brief addresses several claims regarding the Palmer Airport. Briggs' claims regarding the Palmer Airport are generally not addressed in reference to or in regard for the standards for annexation. Rather, they appear to be complaints arising from the location of his property close to the Palmer Airport, a condition that exists with or without annexation.

Regardless of Briggs' claims, there is no aviation easement, building restriction zone or other limitation or encumbrance on Briggs' property stemming from the location of his property adjacent to the Palmer Airport. There is no land use restriction or easement or condition in existence or required for the operation of the Palmer Airport that affects Briggs' property.

Briggs mentions several airport operational factors that he claims affect his property, including, according to Briggs, "uncontrolled air traffic [that] continually trespasses across my property at unsafe distances;" "unacceptable noise levels from Heavy Aircraft and Helicopters;" and "my home and property being inundated with exhaust smoke." The Palmer Airport has been in this location for decades, and expansion of the main runway north to adjoin the property now owned by Briggs occurred at least twenty years ago. The Division of Forestry facility at the north end of the main runway has been in operation about three years. Large aircraft used the Palmer Airport many years before the Division of Forestry was in operation. The typical operation of the airport involves aircraft over flights of nearby areas, aircraft engine and rotor noise, and exhaust fumes. The levels of these impacts are to be expected given the traditional use of this area as an airport.

Palmer Airport has a Federal Aviation Administration Flight Service Station, but there is not an air traffic control tower at the airport to monitor actual aircraft flight patterns. Generally, aircraft use standard approach patterns. Property owners do not own rights to the air above their property, so Briggs cannot claim that aircraft "trespass" across his property if they fly over his property. In response to Briggs' concerns about Division of Forestry helicopters flying over his property, the City several months ago advised Forestry to avoid such a flight pattern if possible. However, the Palmer Airport remains an uncontrolled airport and the City assumes no role in controlling air traffic at and in the vicinity of the airport. Briggs is correct that the City's airport master plan erroneously states the nearest residence to be "approximately three-quarters of a mile south," since his residence is within a few hundred yards east of the main runway. This was simply an oversight on behalf of the consultant who prepared the airport master plan.

Briggs' claim that the City has zoned his property as an Airport Industrial Area, and that the City has no right to do this, is misinformed. The "Land Use" map he includes (Exhibit 6, page 3) is a copy of a map from the Palmer Airport master plan (April 2001) that indicates land use, not zoning. Briggs'

property was at one time in industrial use and it was probably at that time that the land use was noted for the purposes of producing the map in the Matanuska-Susitna Borough planning department. The “industrial” use noted on the map does not constitute zoning of the property in any way; in fact, the Borough has not zoned any areas outside the City, including Briggs’ property, and the City’s zoning powers do not extend outside the City’s present boundaries.

3. Briggs claims he will receive no benefit from annexation because, according to Briggs, the City has “no plans to provide my property with any Municipal Services such as Sewer or Water,” and that by living in the Borough Core Area and along a State-maintained road, his property “is adequately served by local services.”

As a Borough resident outside the City, Briggs is served by Borough fire protection and road maintenance service areas (although the Old Glenn Highway adjacent to his property is maintained by the State of Alaska), and by other Borough and state services. He is correct that the City does not have definite plans to extend water or sewer utilities to his property. Such an extension is not required by City code, provided an occupied dwelling or building is more than 150 feet from existing City utilities, which is the case with Briggs’ residence.

4. Briggs states the annexation of his property “is directly intended to deprive me of the full rights of the use and enjoyment of my property, and/or steal my property out right.” He claims the annexation “constitutes an Uncompensated Taking, and a violation of 42 USC 1985.”

Briggs does not specify how the City’s annexation will deprive him of rights to use and enjoy his property, or how the annexation will “steal [his] property out right.” The extension of city services and regulations through annexation is a legitimate exercise of municipal powers. Annexation of territory to a city does not constitute an “uncompensated taking.” Annexation does not convey to the City any property right in annexed properties.

Municipalities can obtain an interest in private property either by lease or purchase negotiated with the owner, or through eminent domain or tax foreclosure. Alaska Statute Sec. 29.35.030 grants to municipalities, including home rule municipalities such as Palmer, the power of eminent domain and declaration of taking, provided the municipality follows the procedures set out in AS 09.55.250—09.55.460. The fact that the City has this power and that this power would extend to the annexed lands following the effective date of annexation does not mean the City will use this power. The City also has the authority to foreclose on property due to tax delinquency. The Matanuska-Susitna Borough, in which Briggs’ property is located, also has

the power of eminent domain and declaration of taking, as well as the ability to foreclose on property for tax delinquency. Briggs, like all property owners in an Alaskan municipality, has been subject to these municipal powers for as long as he has owned his property. There will be no change in this condition following annexation of Briggs' property to the City, except that the City will be added to the list of government entities that already hold tax foreclosure or eminent domain powers in this area. While the City may possess the power of eminent domain and to foreclose on property due to delinquent tax payments, no such actions are proposed by the annexation or anticipated following annexation.

Other powers that will extend with the annexation that may raise Briggs' fears of "taking" are City planning and land use regulation powers. The City's planning and land use ordinances are intended to carry out legitimate government purposes to generally promote public health, safety and general welfare. Briggs' property is presently not zoned by the Borough. City ordinance provides in Briggs' case that, if his property is annexed, his property enters the City zoned as single-family residential. This is the land use he claims the property to be in at the present time, so there appears to be no land use conflict that would require rezoning of the property to a different zoning classification following annexation. For these reasons, the City sees no evidence to support Briggs' claim that the proposed annexation constitutes an uncompensated taking or theft of his property.

5. Briggs claims the City, in regards to an "illegal landfill" on Palmer Airport property, has violated environmental protection provisions and the City's "contract with the Federal Aviation Administration," and maintains "a Public Nuisance at their airport."

Briggs filed suit against the City several years ago in regards to a dump operated for a time by the City on airport property. To summarize a long and complicated proceeding, Briggs did not prevail in this matter. In April, 2002, the United States Court of Appeals, Ninth Circuit, affirmed the Alaska U.S. District Court ruling against Briggs. Attached as Reply Brief Exhibit A is a copy of the Ninth Circuit Court's April 16, 2002, memorandum regarding this decision.

Responsive Brief Submitted by John Nystrom (with attached petition signed by eleven individuals)

Nystrom's brief focuses on the annexation standard at 3 AAC 110.090, Needs of the Territory, and claims that annexation area "A" is served sufficiently by the Matanuska-Susitna Borough, and that "no further enhancements to the health, safety and general welfare conditions can be made by annexation to the City of Palmer." He also states that "water and onsite systems in area "A" are very sufficient."

This area and others proposed for annexation by the City are served by Borough and State of Alaska services, to the extent that a case may be made that basic public health and safety needs are presently being met. In that regard, the City believes it can provide higher levels of service to this and other annexation areas, as well as planning and zoning services and infrastructure development or improvement.

For example, law enforcement services in the areas proposed for annexation are presently provided by the Alaska State Troopers. Following annexation, the Palmer police department will provide service in these areas. There will be significant improvements in response time and the level of service provided by the Palmer police department over service presently provided by the Troopers. The Palmer Trooper Post serves an area encompassing thousands of square miles and hundreds of miles of road in Southcentral Alaska. Continued state operating budget cuts have resulted in fewer state troopers on duty, with the result that those troopers on duty must now cover larger areas. Due to these limitations, troopers are not able to respond to relatively low priority public safety service calls, or are sometimes not available for a rapid response to an emergency call. Annexation will result in a higher level of public safety service in the annexation areas, including area “A”. This level of improved service contradicts Nystrom’s statement that “no further enhancements to the health, safety and general welfare conditions can be made by annexation to the City of Palmer.”

Nystrom states that the “few roads in this annexation proposal are only a few hundred feet in length and maintained.” However, at a public meeting on the annexation petition prior to its submittal, a resident of area “A” expressed concern that property owners in this area are paying taxes to the Borough road maintenance service area, but are not receiving any Borough road maintenance services. This is presumably due to the substandard width of N. Glenn Avenue and N. Hilltop Drive, or the lack of an adequate turn-around at the end of N. Hilltop Drive.

While Nystrom’s brief concentrates on the level and sufficiency of municipal services, the City reiterates that there are other reasons to justify the proposed annexation of this and the other areas proposed for annexation. As stated above and in the City’s petition, this annexation takes a comprehensive approach to annexation in order to establish more efficient and effective boundaries, to improve service delivery, and to eliminate enclaves. The proposed annexation also addresses the need to address economic development of areas close to the City.

Nystrom’s brief proposes an “addendum” to his brief that asks the Local Boundary Commission to consider removing an area from proposed annexation area “A” “that would have a south boundary of East Glenn Ave., East Hilltop Drive and West Boundary would be the Old Glenn Highway, the north boundary above the Pete Yannikos property.” (Since the Old Glenn Highway (Arctic Avenue) lies well south of area “A” and is within the existing City limits now south of area “A”, the City assumes Nystrom is referring to the Glenn Highway immediately west of area “A”. Also, “South Glenn

Avenue” is actually N. Glenn Avenue, and “East Hilltop Drive” is actually North Hilltop Drive.) The City has drawn what it assumes to be this area proposed for exclusion from the proposed area “A” annexation area and shows this excluded area on the attached map, Reply Brief Exhibit B. As this map shows, Nystrom’s proposal will *create* an enclave if other areas of area “A” remain in the annexed area. This is counter to the intent of State annexation standards and the City’s intentions in proposing this annexation. It should be noted that other property owners in this area also object to annexation, as shown by the signatures on the “Petition in Opposition to Annexation” attached to Nystrom’s brief, and other correspondence submitted as comment on the petition, but some of these properties are not included in Nystrom’s description of the boundary of the area proposed to be excluded from annexation.

Nystrom’s “concern with the L.B.C. to address the question of the City of Palmer overlapping boundary question with the Mat-Su Borough, regarding Area “A”” appears to refer to 3 AAC 110.130 (e) regarding overlapping boundaries. It appears this standard is not applicable to this annexation because the present City of Palmer boundaries are entirely within the Matanuska-Susitna Borough boundary and do not “overlap” the boundaries of the borough. No overlapping condition exists. This section’s provisions (in cases of overlapping boundaries, the annexation petition must address either annexation of the enlarged city to the existing organized borough, or detachment of the overlapping region from the existing municipality) are not applicable in regards to the City’s present annexation petition.

#### Responsive Brief Submitted by Daniel Hanrahan

Erling T. Johansen, attorney for Daniel Hanrahan, submitted the responsive brief for Hanrahan.

Hanrahan opposes annexation of his property and also annexation of the adjacent Mary P. Cullison parcel. Hanrahan asks that the Local Boundary Commission either:

1. deny in its entirety the pending annexation petition; or,
2. deny the petition with regard to that portion of the petitioner’s map denoted as “K”; or,
3. that the Commission apply its discretionary authority to alter the boundary of a limited section of area “K” by dropping the northern boundary from the north end of Lots D29 and D30 down to the southern edge of each lot, to exclude these two lots from the annexation.

The basis of the City’s purpose in annexing these two lots in addition to the other properties in area “K” and other proposed annexation areas is to establish an effective and efficient municipal boundary that recognizes existing or reasonably anticipated development. Also, there is a need as shown by the requests for annexation from several



property owners in area “K” to address existing health and general welfare issues by installing a safe and reliable drinking water system.

In regards to reasonably anticipated development, the property immediately east of Cullison’s Lot D30 is planned for construction of a subdivision containing approximately 120 lots. The City is also aware of interest by other property owners or developers to subdivide and develop other large lots in area “K”, such as lots C3 and C5 in Section 5. These developments indicate a trend toward increased population density and property development in this area. This trend may or may not touch the Hanrahan or Cullison properties, but the City believes it is reasonable to include areas that show a trend toward development in order to plan for infrastructure and transportation facilities to serve those developing areas, as well as to provide planning and land use regulation in order to assure the orderly and compatible development of property.

Hanrahan claims that existing services provided by the Matanuska-Susitna Borough or the State of Alaska are adequate. Please refer to this Reply Brief’s discussion of this issue in previous sections.

Hanrahan’s property, or an easement adjacent to his property, may soon be involved in infrastructure development associated with nearby property, and, if annexation is approved, a water main to be built adjacent to his property. The City is negotiating a subdivision agreement with the developer of the Hidden Ranch Subdivision immediately east of the Cullison property and the agreement addresses the need to oversize a proposed water main to be constructed in the Hidden Ranch Subdivision so it could be extended west of that subdivision to serve as part of a new looped water system to serve Palmer West Subdivision and the Helen Drive area. The Hidden Ranch plat includes a street that meets the easement that runs along the north boundary of the Cullison and Hanrahan properties. When the water main is extended, it would be built west from Hidden Ranch in this right-of-way and its location would benefit adjacent properties, including Hanrahan’s and Cullison’s, by improving land value as a result of a public water system being adjacent to their property. In this regard, perhaps the City should have included in its annexation petition properties north of the Hanrahan and Cullison properties, which would receive equal benefits from the construction of a water main within this easement.

Hanrahan’s brief mentions “the new burden of city taxes” if the property is annexed to the City. The City’s petition on page 9 shows that the Borough service area and non-areawide property tax rates for the fiscal year ending June 30, 2002, total 3.56 mills. If property is annexed to the City, these service area and non-areawide tax levies end and are replaced by the City’s existing property tax levy, which is now 3 mills. Therefore, instead of imposing a higher property tax burden on annexed properties, the annexation will actually reduce property tax rates. The City 3% sales tax will be in effect in annexed areas, however, where there is no Borough sales tax presently. A sales tax will not apply to residential activities, however, which are the predominant land use in area “K” and, in fact, in the entire area proposed for annexation.

In regards to Hanrahan's brief's analysis of the character of the territory proposed for annexation, the brief claims that City ordinances, regulations and policies are "incompatible with the Lot D29 and D30 activities." The brief cites the keeping of animals on these properties as a potential incompatible use, and quotes City ordinance Section 6.08.020. Palmer municipal code provides that its restrictions on the keeping of a certain number or size of animal do not apply on lots exceeding one acre in size (PMC 6.08.020 (E) (4)). Therefore, the keeping of animals described by Hanrahan can continue on his or Cullison's properties following annexation because the properties are larger than one acre and eligible for this exception. The requirement in subsection (E) (4) that such animals not be closer than twenty-five feet from an exterior lot line is a reasonable fencing requirement for health and welfare purposes to assure there is a buffer between animal yards to mitigate odors and runoff impacts from animal yards on adjacent properties.

Hanrahan states that this separation requirement "is just the tip of the iceberg of undesirable and incompatible Palmer characteristics," and his brief goes on to list several differences between his property and properties within the City. These include a claim that there is a difference between the urban and rural character of the areas. There is some truth to the statement that some areas proposed for annexation are more rural than areas within the City, but this difference is not, in the City's opinion, significant to the point of classifying these areas as not of a similar character, particularly when there is a recognized trend toward subdivision and development of large lots adjacent to or near the present City boundary. Also, there are large, relatively undeveloped areas within the present City limits.

The City does not agree with Hanrahan's statement that this area is "neither an economic or social part of the City of Palmer." The only road access out of this area passes through the City of Palmer. The closest commercial center is in Palmer. While it can be said that Anchorage and Wasilla provide commercial and social opportunities for residents of the Palmer area, Palmer is the most convenient commercial and social center for the annexation area. If by his statement Hanrahan means that activities on his property are not related to the economic or social activity of Palmer, this addresses this characteristic in a narrow and individual fashion, and does not recognize the larger economic and social interaction that exists between neighborhoods and communities in and around Palmer.

Hanrahan's brief states that the annexation boundary that encompasses Lot D29 and D30 is not compact. While the proposed annexation boundary in Area "K" does extend west of other areas of the City, this was done to address the request of several property owners in this area for annexation for the purpose of extending the public water system.

In regards to Hanrahan's claim that the proposed annexation boundary is not consistent with the provision that the proposed boundaries of the city must not include entire geographical regions or large unpopulated areas," the City believes that its petition is not inconsistent with that provision. The areas proposed for annexation, including area "K", are not "entire geographical regions or large unpopulated areas." These areas are

subdivided and occupied, sometimes at relatively low densities, but, nonetheless, they are similar in character and population to areas within the City. The western portion of area “K” has demonstrated a need for municipal services through requests for a public water system and increasing land development and population.

Exclusion of Lot D29 and Lot D30 from the annexation boundary could result in a piecemeal dismantling of the very basis for the proposed annexation, which is to approach the issue of the City’s boundaries with a more comprehensive view to consolidating small, individual annexations, and to provide suitable boundaries that address the growth and development of the area around the present municipal boundaries. A history of small, individual annexations in Palmer has resulted in a restricted, inefficient municipal boundary that is often not suited to addressing issues of population growth and development. If Lots D29 and D30 are excluded from the annexation for reasons particular to those properties, several other properties in the proposed annexation could also be excluded, with the result that the historically irregular pattern of Palmer municipal boundaries would be perpetuated, to the detriment of efficient provision of services and effective planning and development of the community.

Finally, as a general statement, the City believes its annexation should be viewed properly in the context of the long term nature of municipal boundaries. In Hanrahan’s and other commenters’ responses, there is often a claim that land use or other characteristics of individual properties *at this time* render the property not suitable for annexation. The process to establish municipal boundaries must look beyond present situations toward reasonable expectations of change in the future in order to provide for the effective delivery of municipal services and more efficient boundaries. The City’s petition is based upon this longer term view.

#### Submitted Correspondence


Several letters were submitted in response to the comment period on the annexation petition. Most of these express the property owners’ wish not to be annexed.

The City understands that the annexation as proposed will not be unanimously accepted by property owners in areas to be annexed. The City believes, however, that it is capable of providing higher levels of service and a municipal government that is more responsive to citizen’s municipal service needs, and, given present property tax rates, at less cost. The City also believes that the orderly growth of the City and its surrounding areas depends on planning for the community’s future. Palmer has a history of a planned community dating from the federal government’s Colony project that established much of the core infrastructure and planned layout of Palmer that exists today. The City wishes to maintain quality of life benefits that come from good community planning and good infrastructure planning and development. Palmer has demonstrated capabilities in that regard. The annexation proposal takes a significant step to meet those goals.

The letter submitted by the Matanuska-Susitna Borough advises that the boundary description of the proposed annexation be checked carefully. In preparing the petition, the City hired a surveying firm to draft the boundary description. The description was checked carefully and the City believes it is correct. Exhibit A of the petition, however, does not include in the list of individual properties in each annexation area a description of the township and range in which these properties are located. This information has been added to Exhibit A (pages 20, 21 and 22 of the petition), and this amended copy of Exhibit A is attached to this Reply Brief as Reply Brief Exhibit C.

DATED at Palmer, Alaska, this 18<sup>th</sup> day of July, 2002.

CITY OF PALMER, ALASKA

By:   
Thomas Healy  
City Manager

6/7/02  
FILED

APR 16 2002

CATHY A. CATTERSON  
CLERK, U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

RAY T. BRIGGS,

Plaintiff - Appellant,

v.

CITY OF PALMER,

Defendant - Appellee.

No. 01-35551

D.C. No. CV-95-00007-A-HRH

MEMORANDUM RECEIVED  
Ingaldson Maassen, PC  
MAY 15 2002  
File No. 4031 Cal: \_\_\_\_\_  
Approved for Fil: \_\_\_\_\_

Appeal from the United States District Court  
for the District of Alaska  
H. Russel Holland, Chief Judge, Presiding

Submitted April 8, 2002\*\*

Before: BROWNING, KLEINFELD, and GOULD, Circuit Judges.

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, we deny Briggs's request for oral argument.

REPLY EXHIBIT A  
Page 1 of 3

Ray T. Briggs appeals pro se the district court's judgment following a bench trial in his action alleging that the City of Palmer (the "City") violated the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The district court committed harmless error, if any, by denying Briggs's request for a jury trial, because no reasonable jury could have found in his favor based upon the evidence he presented at trial. *See Kulas v. Flores*, 255 F.3d 780, 784 (9th Cir. 2001).

The district court's finding that Briggs failed to establish that the City caused the contamination of his groundwater is not clearly erroneous. *See Jones v. United States*, 127 F.3d 1154, 1156 (9th Cir. 1997).

The district court did not abuse its discretion in denying the motion of Gilbert Shea, Briggs's domestic partner, to join as a co-plaintiff and add numerous new causes of action because granting the motion would have caused the City prejudice. *Cf. Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (affirming denial of plaintiff's motion to amend complaint to add new causes of action because of delay, prejudice, and bad faith).

We affirm the district court's denial of Briggs's motions to compel and motion to suppress his deposition because it is not more likely than not that the rulings affected the judgment against him. *See Kulas*, 255 F.3d at 783.

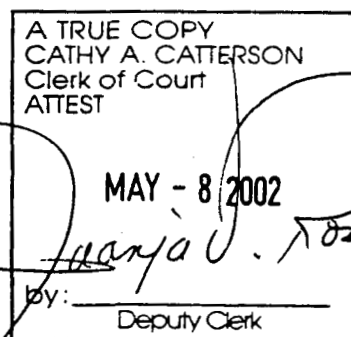
The district court did not abuse its discretion in denying Briggs's motion to recuse Judge Holland because the motion was premised solely on prior rulings adverse to Briggs. *See id.* at 787.

Briggs's contentions regarding the trial transcripts are without merit.

Briggs's remaining contentions are without merit.

**AFFIRMED.**

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REPLY EXHIBIT A

Page 3 of 3





# EXHIBIT A (AMENDED)


## LEGAL DESCRIPTION OF THE TERRITORY PROPOSED FOR ANNEXATION

An area located within the Matanuska-Susitna Borough, Third Judicial District, State of Alaska, more particularly described as follows:

<b>Annexation Area A</b>	<b>Area:</b>	<b>5,049,162 Sq ft</b>	<b>115.91 acres</b>	<b>ALL SEWARD MERIDIAN T18N, R02E</b>
Tax Parcel B2				Section 28
Tax Parcel B3				Section 28
Tax Parcel B4				Section 28
Tax Parcel C1				Section 28
Tax Parcel C3				Section 28
Tax Parcel C5				Section 28
Tax Parcel C6				Section 28
Tax Parcel C7				Section 28
Tax Parcel C8				Section 28
Tax Parcel C10				Section 28
Alaska Rockhound	Lot 4 through Lot 8	Block 1		Section 28
	Lot 9-1	Block 1		Section 28
	Lot 10-1	Block 1		Section 28
Bailey Heights	Lot 1 through Lot 11	Block 1		Section 28
	Lot 13 through Lot 21	Block 1		Section 28
	Lot 21-1	Block 1		Section 28
	Lot 22-2	Block 1		Section 28
	Lot 24 through Lot 28	Block 1		Section 28
	Lot 23 through Lot 26	Block 3		Section 28
Riverside	Lot 18 through 33	Block 1a		Section 28
Old Alaska Railroad Grade				Section 28
<b>Annexation Area B</b>	<b>Area:</b>	<b>1,218,975 Sq ft.</b>	<b>27.98 acres</b>	<b>T18N, R02E</b>
Tax Parcel D1				Section 28
Tract 4-1				Section 33
<b>Annexation Area C</b>	<b>Area:</b>	<b>1,592,462 Sq ft.</b>	<b>36.56 acres</b>	<b>T18N, R02E</b>
Tax Parcel A10				Section 32
Tax Parcel A11				Section 32
<b>Annexation Area D</b>	<b>Area:</b>	<b>2,446,104 Sq ft.</b>	<b>56.16 acres</b>	<b>T18N, R02E</b>
Tax Parcel B5				Section 34
Tax Parcel B6				Section 34
Tax Parcel C2				Section 34
Tax Parcel C18				Section 34

	Tax Parcel C19		Section 34, T18N, R02E
	Tax Parcel C20		Section 34 " "
	Tax Parcel C21		Section 34 " "
	Tax Parcel B30		Section 3, T17N, R02E
<b>Annexation Area E</b>		Area: 217,798 Sq ft.	<b>5.00 acres</b>
	Tract 1B-1		Section 33, T18N, R02E
<b>Annexation Area F</b>		Area: 3,912,407 Sq ft.	<b>89.82 acres</b>
	Tax Parcel A2		Section 33, T18N, R02E
	Tax Parcel D6		Section 33
	Tax Parcel D24		Section 33
	Tax Parcel D27		Section 33
	Tax Parcel D3		Section 33
	Tax Parcel D5		Section 33
	Tax Parcel D29		Section 33
<b>Annexation Area G</b>		Area: 508,410 Sq ft.	<b>11.67 acres</b>
	Tax Parcel A7		Section 4, T17N, R02E
	Tax Parcel A8		Section 4 " "
<b>Annexation Area H</b>		Area: 1,553,644 Sq ft.	<b>35.67 acres</b>
	Tax Parcel C20		Section 32, T18N, R02E
	Tax Parcel C24		Section 32 " "
	Tax Parcel C21		Section 32 " "
	Tax Parcel C19		Section 32 " "
	Tax Parcel B2		Section 5, T17N, R02E
<b>Annexation Area I</b>		Area: 44,818 Sq ft.	<b>1.03 acres</b>
	Tax Parcel B9		Section 5, T17N, R02E
<b>Annexation Area J</b>		Area: 44,136 Sq ft.	<b>1.01 acres</b>
	Tax Parcel A5		Section 5, T17N, R02E
<b>Annexation Area K</b>		Area: 17,393,847 Sq ft.	<b>399.31 acres</b>
	Tax Parcel C3		Section 5, T17N, R02E
	Tax Parcel C4		Section 5
	Tax Parcel C5		Section 5
	Tax Parcel C10		Section 5
	Tax Parcel C14		Section 5
	Tax Parcel C17		Section 5

Tax Parcel C19				Section 5, T17N, R02E
Tax Parcel C20				Section 5
Tax Parcel C21				Section 5
Tax Parcel C22				Section 5
Tax Parcel C24				Section 5
Tax Parcel C25				Section 5
Tax Parcel C26				Section 5
Tax Parcel C27				Section 5
Tax Parcel D30				Section 6
Tax Parcel D28				Section 6
Tax Parcel D27				Section 6
Tax Parcel D19				Section 6
Tax Parcel D29				Section 6
Tax Parcel D26				Section 6
Tax Parcel D18				Section 6
Tax Parcel D20				Section 6
Tax Parcel D17				Section 6
Pat-Mar Acres	Lot 1	and	Lot 2 Block 1	Section 5
Fairside Estates	Lot 1	and	Lot 2 Block 1	Section 5
Walker Estates	Lot 1	and	Lot 2 Block 1	Section 5
Palmer West	Lot 1	and	Lot 25 Block 1	Section 6
	Lot 1	and	Lot 11 Block 2	Section 6
	Lot 1	and	Lot 5 Block 3	Section 6




**Annexation Area L**

Area: 2,667,245 Sq ft.

61.23 acres

Tax Parcel C7		Section 4, T17N, R02E
Tax Parcel D5		Section 4
Tax Parcel D20		Section 4
Tax Parcel D21		Section 4
Cope Subdivision	Tract A	Section 4



**Annexation Area M**

Area: 3,484,334 Sq ft.

79.99 acres

Tax Parcel D1		Section 8, T17N, R02E
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<b>TOTAL AREA</b>	Area: 40,133,342 Sq ft.	921.34 acres
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